

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**NOEL BRALLEY,
CAROLYN BRALLEY,
and
BRAXTON BRALLEY,**

Plaintiffs,

v.

Case No. 3:10-cv-138-REP

MARK A. CAREY, *et al.*

Defendants.

**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE DEFENDANTS' RESPONSE
TO PLAINTIFFS' MEMORANDUM IN SUPPORT OF A FINDING OF CONTEMPT
AGAINST DEFENDANTS**

INTRODUCTION

On November 3, the Court entered an Order that, among other things, set a deadline of November 21 at 5:00 p.m. by which “Defendant Mark A. Carey may file a written response” to Plaintiffs’ memorandum in support of a finding of contempt. ECF No. 73, ¶ 3. Defendant Mark A. Carey filed Defendants’ Response to Plaintiffs’ Memorandum in Support of a Finding of Contempt Against Defendants on November 23. (“Defendants’ Memorandum”) ECF No. 76. Defendants made no request for an extension or enlargement.

Plaintiffs contend that Defendants’ Memorandum should be stricken because it was untimely filed.

ARGUMENT OF LAW

Because no request for an extension or enlargement was made and because Defendants have offered no reason for their untimely submission, Defendants’ Memorandum should be stricken and not considered by the Court. *Littlejohn v. Moody*, 381 F. Supp. 2d 507, 509 (E.D. Va.

2005). *Pinpoint IT Servs., L.L.C. v. Atlas IT Exp. Corp.*, 2011 U.S. Dist. LEXIS 75622, *29 (E.D. Va. July 13, 2011). Absent a showing of excusable neglect, Plaintiffs' motion to strike should be granted and Defendants' Memorandum should be stricken from the record. *M. Shanken Communs., Inc. v. Variant Events, LLC*, 2011 U.S. Dist. LEXIS 56138, * 19-20 (E.D. Va. May 25, 2011). When a memorandum is filed outside of the deadline, it should be stricken from the record. *Rossmann v. Lazarus*, 2008 U.S. Dist. LEXIS 78925, *4 (E.D. Va. Oct. 7, 2008).

CONCLUSION

On November 3, the Court set a clear and unmistakable deadline of November 21 at 5:00 p.m. Defendant Mark A. Carey was given this same November 3 deadline by the Court during the October 28 hearing. Defendant did not adhere to the deadline. He made no request for an extension or enlargement of the deadline. Defendants' Response should be stricken from the record.

Respectfully submitted,
Noel Bralley
Carolyn Bralley
Braxton Bralley
By Counsel

/s/
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of November, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, and hereby certify that I will electronically send and mail the document by U.S. mail to the following non-filing users:

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